

## REMARKS

In the Office Action, mailed October 23, 2006, the abstract was apparently objected to as having undesirable legal terminology, and Claims 3-7 were rejected under 35 U.S.C. 102(b) as being anticipated by *Buelna* (U.S. Patent No. 5,242,459).<sup>1</sup> Claims 3-7 remain pending, of which claim 3 is the only independent claims at issue.

The abstract is amended above to address the concerns raised in the Office Action. Applicants submit that the abstract is in proper form.

Applicants traverse the rejection of claims 3-7 under 35 U.S.C. § 102(b) as being anticipated by *Buelna* for at least the reason claims 3-7 are not anticipated because “each and every element as set forth in the claims is [not] found, either expressly or inherently described” in *Buelna*. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In particular, *Buelna* was identified as including a “shaft 16 . . . , the shaft 16 having a groove 58 formed in the side thereof, the groove 58 in communication with an opening 38 formed in the side of the shaft, the opening 38 disposed proximal the distal end.” (Office Action at 3).

In contrast, the “groove 58” and “opening 38” are formed in “shaft 12”, identified in the Office Action as the “suture retainer 12” which is separate from the “shaft 16”. As such, structurally the device of *Buelna* does not include “the shaft having a groove formed in the side thereof, the groove in communication with an opening formed in the side of the shaft, the opening disposed proximal the distal end.” Even if, *arguendo*, the “shaft 12” is considered as the “shaft having a groove formed in the side thereof”, *Buelna* fails to teach “a suture retainer sidably disposed *within* the shaft” as recited in independent claim 3. For at least this reason, *Buelna* fails to disclose each and every element of claim 3.

Because *Buelna* does not disclose or suggest each and every element of claim 3, Applicants submit that claim 3 is in condition for allowance. Claims 4-7 are allowable at least for their dependence on allowable independent claim 3. For at least these reasons, Applicants respectfully request withdrawal of the rejection of claims 3-7 under 35 U.S.C. § 102(b) over *Buelna*, and allowance of pending claims.

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 23<sup>rd</sup> day of January, 2007.

Respectfully submitted,

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